

FINDINGS OF FACT

1. The appellant is employed as a Job Service Specialist 2 (PR12-02) in a project position in the Division of Employment and Training Services, Department of Industry, Labor and Human Relations (DILHR).
2. The anticipated ending date for the project position in which the appellant is employed is June 30, 1983.
3. Appellant began employment at DILHR in the Governor's Manpower Office on July 5, 1977 as a limited term employe (LTE) on a project basis as a Typist 2.
4. Prior to the end of the LTE position described in Finding of Fact 3, the appellant was appointed on May 5, 1978 as a Clerk 3 LTE on a project basis with an anticipated ending date of September 30, 1978. This position was in Manpower Services at DILHR.
5. On September 24, 1978, the appellant was appointed as a Clerk 4 LTE on a project basis with an anticipated ending date of June 30, 1979 in Manpower Services at DILHR.
6. On July 30, 1979, the appellant was appointed to a Clerk 4 (PRO2-07) project position in the Division of Employment and Training Services (DETS) at DILHR.
7. As the result of a personnel management survey of all clerical positions in the civil service by the State Division of Personnel, the appellant's position was reallocated from Clerk 4 to Program Assistant 2 (PRO2-07) effective August 26, 1979. The appellant did not appeal this reallocation decision.
8. On October 18, 1981, the appellant was appointed to a Job Service Specialist 2 (PR12-02) project position in DETS. Pay range 12-02

is a counterpart pay range to pay range 1-10. Appellant did not appeal the decision to allocate this position to the Job Service Specialist 2 level.

9. Appellant never received a permanent appointment to a classified civil service position.

10. Appellant's ending hourly wage in the Program Assistant 2 project position in DETS was \$6.787.

11. Appellant's beginning hourly wage in the Job Service Specialist 2 project position in DETS was \$7.620.

12. A Clerk 4 position is a clerical position.

13. A Program Assistant 2 position is a clerical position.

14. A Job Service Specialist 2 position is a professional position.

15. The following is a summary of the primary duties and responsibilities of appellant's Program Assistant 2 (PA-2) project position:

A. Under the general direction of the District Coordinator, provide information and technical assistance in the development, maintenance and dissemination of demographic and statistical information on CETA participants and programs to program operators, AMPB committees and members, and staff of the regional office; and for maintaining liaison with the central office data unit to insure coordination among districts and conformity with DOL and Manpower Service Division policies and procedures.

B. Maintenance of liaison with Central Office data unit staff to insure that regional office operations are coordinated with Division policies, procedures and information requirements.

C. Provision of information, data, and MIS technical assistance to other staff of regional office as necessary.

D. Performance of related special projects and talks as necessary and assigned.

16. The following is a summary of the primary duties and responsibilities of appellant's Job Service Specialist 2 (JSS-2) project position:

Under the direction of the District Director and in conjunction with the CST II District Intake Services leadworker, the CST 1 is responsible for maintaining an applicant intake pool that

provides a continuous and timely flow of eligible applicants to program operators at the appropriate EPS level requirements and the tracking of participants through the district's services delivery system.

A. Delivery of intake, initial assessment and referral services to CETA applicants.

B. Provision of related special services and projects as assigned.

17. Section 230.27(2)(a), Wis. Stats. states:

Project appointees who have not previously held a permanent classified or unclassified civil service position may not transfer continuous service rights and benefits earned in any project appointment to subsequent project or permanent appointments.

18. "Position" is defined in §230.03(11), Stats. as:

. . . a group of duties and responsibilities in either the classified or the unclassified divisions of the civil service, which require the services of an employe on a part-time or full-time basis.

19. "Project appointment" is defined in §Pers 34.01, Wis. Adm. Code

as:

. . . the appointment of a person to a project position under conditions of employment which do not provide for attainment of permanent status.

20. Section Pers 34.04, Wis. Adm. Code, provides that, in regard to project appointments:

Position classification actions shall be made in accordance with chs. Pers 2 and 3, Wis. Adm. Code.

21. Section Pers. 34.06(5)(b), Wis. Adm. Code, provides that:

(b) Accumulated annual leave, sick leave, and continuous service credits earned during a project appointment shall not be carried over upon appointment to a permanent, seasonal, sessional, project or unclassified position unless the project appointee previously held a permanent, seasonal, sessional or unclassified position and could have carried over the benefits if the project appointment had been a permanent appointment.

22. Section Pers. 34.08. Wis. Adm. Code, provides in pertinent part:

Employes on a project appointment may be terminated at any time. Employes so terminated do not have layoff, reinstatement, restoration or displacement rights to any permanent, seasonal or sessional position unless those rights or eligibilities were previously earned in a permanent, seasonal or sessional position and are being applied within three years of the date of separation from that position or prior to the expiration of an approved leave of absence.

23. Prior to October 1, 1981, the Basic Services Function of the CETA program had been performed by the Job Service Division of DILHR pursuant to contract with the DETS. On October 1, 1981, DETS assumed this Basic Services Function which entails intake, initial assessment, certification, and referral of CETA-eligible participants. As a consequence of DETS's assumption of this new function, the data administration duties appellant had been performing as a PA-2 in the Western District Office were reassigned to positions in the centralized Data Services Unit within DETS and appellant was assigned to perform Basic Services Functions in the Western District Office.

24. Training of DETS personnel to implement Basic Services functions was begun subsequent to July 15, 1981 and was substantially completed by September 3, 1981.

25. Although DILHR recommended that in view of this reassignment of duties, appellant's position be reallocated from PA-2 to Community Services Technician 1, the Division of Personnel decided that, in view of the current duties of appellant's position, classification at the JSS-2 level was more appropriate.

26. The Division of Personnel also decided that the result of this reassignment of duties was the termination of appellant's project appoint-

ment as a PA-2 and the beginning of a new project appointment as a JSS-2. A consequence of this decision was that appellant lost sick leave benefits which she had accrued as a project appointee prior to October 18, 1981, the effective date of her new project appointment as a JSS-2.

27. The function of DETS is to provide training programs, supportive services and public service job opportunities for the unemployed and economically disadvantaged. DETS carries out the Governor's responsibility as CETA prime sponsor to the 49 counties of the Balance of the State area as well as the monitoring and evaluation and compliance review of the prime sponsors and subgrantees.

28. The CETA program was scheduled to expire on September 20, 1982.

CONCLUSIONS OF LAW

1. This appeal is properly before the Commission pursuant to §230.44(1)(a), Stats.
2. The appellant has the burden of proof.
3. The appellant has not sustained her burden of proof.
4. The decision by respondents that appellant's project appointment as a PA-2 had terminated and that her project appointment as a JSS-2 was a new project appointment was not incorrect.

OPINION

The stipulated facts and documents in this appeal clearly indicate that the duties performed by appellant as a JSS-2 were not a gradual and logical outgrowth of her duties as a PA-2. Appellant's duties as a PA-2 were clerical duties involving primarily the development, maintenance, dissemination, and coordination of data regarding CETA participants and

programs. Appellant's duties as a JSS-2 are professional duties involving primarily the intake, initial assessment, and referral of CETA applicants.

The first subissue to be decided by this appeal is:

Whether the personnel action appealed is properly referred to as an original allocation of a project position, a reallocation, or a reclassification.

Section Pers.3.01, Wis. Adm. Code, provides the following definitions:

(1) ALLOCATION. Allocation means the initial assignment of a position to the appropriate class by the administrator as provided in §230.09(2), Stats.

(2) REALLOCATION. Reallocation means the assignment of a position to a different class by the administrator as provided in §230.09(2) Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position.
- (f) The redefinition of the duties and responsibilities of a vacant position; or
- (g) A change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

(3) RECLASSIFICATION. Reclassification means the assignment of a filled position to a different class by the administrator as provided in §.230.09(2), Stats., based upon:

- (a) A logical and gradual change to the duties or responsibilities of a position.
- (b) Satisfactory attainment of a specified training, education or experience in a position identified in a classification series where the class levels are differentiated on this basis.

None of the bases for regarding a personnel action as a reallocation de-

scribes the action under consideration here. In addition, since the change in appellant's duties was not logical or gradual and the assignment of appellant's position to the JSS-2 classification did not result from appellant's attainment of specified training, education, or experience, the transaction was not a reclassification. The Commission must conclude, therefore, that the action was an original allocation of a project position.

The second subissue is:

Whether the project employees were reassigned but actually continued in their original positions.

As defined by §230.03(11), Stats., a "position" is a "grouping of duties." Logically, then, a different grouping of duties constitutes a different position (other than in the context of a reclassification where the different duties are a gradual and logical outgrowth of the original duties). Appellant's duties as a JSS-2 and her duties as a PA-2 constituted two different groupings of duties and, therefore, two different positions.

The third subissue is:

Whether the administrator erred in failing to grandfather these positions into the classified service pursuant to §230.15, Stats.

Section 230.15, Stats., specifies those situations in which competition is not required in order to fill a position in the classified service and the procedure to be followed when unclassified positions and certain other positions are determined to be more appropriately included in the classified service. Since appellant's PA-2 and JSS-2 project appointments have, at all times relevant to this matter, been regarded as appointments

to the classified service and since project appointments need not be made through the competitive process referenced in §230.15, it is difficult to understand how appellant feels §230.15 is applicable to the facts of this appeal.

The final subissue is:

Whether §230.27(2)(a), Stats., applies and whether it is rational in its application to these appellants.

Section 230.27 (2)(a), Stats., provides that, when an employee moves from one project appointment to another project, he or she may not transfer continuous service rights or benefits earned in the former project appointment. Since the Commission has concluded that appellant did indeed move from one project appointment to another project appointment, this statutory section requires that the benefits earned by appellant in the PA-2 project appointment not transfer to the JSS-2 project appointment. Appellant argues, however, that this result has worked a hardship on the appellant in view of the fact that she lost accrued sick leave benefits. However sympathetic the Commission may be to appellant's situation, the language and intent of the governing statutes and administrative rules is clear and the action of respondents which is the subject of this appeal was clearly in compliance with these statutes and rules.


ORDER

The action of respondents is affirmed and this appeal is dismissed.

Dated: November 9, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

LRM:jab


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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*Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.